Claims 1, 3-9, 11, and 12[1] are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Sparks, II (US 6,352,479) in view of Schneier et al. (U.S. 6,099,408). With respect to independent claims 1 and 7, Applicant respectfully requests that the Examiner withdraw the rejection at least because there is no motivation or suggestion to modify the gaming server of Sparks so that it uses the biometric security device of Schneier to identify a game player using image recognition techniques.

The USPTO is held to a *rigorous* standard when trying to show that an invention would have been obvious in view of the combination of two or more references. *See*, *In re Sang Su Lee*, 2002 U.S. App. LEXIS 855, *10 (Fed. Cir. 2002), *citing*, *e.g.*, *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."). The Federal Circuit goes on to emphasize that the "need for specificity pervades this authority." *In re Sang Su Lee* at *10-*11 (*citing In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed")).

The Examiner has acknowledged that the gaming server of Sparks is deficient for failing to disclose a player identifier "using image recognition techniques." Therefore, the Examiner

[1] Although the December 20, 2002 Office Action's rejection is directed to canceled claims 2 and 10, Applicant has assumed that the Examiner intended to direct this rejection to all of the pending claims.

looks to the biometric player verification device of Schneier's apparatus for securing electronic games in an attempt to make up for this deficiency.

In the previous Amendment, Applicant pointed out that there was no motivation or suggestion to combine Sparks and Schneier due to the fact that Sparks is directed to mere video game playing, while Schneier is directed to a gambling device. The Examiner responded to these arguments by asserting that Sparks can be played in a tournament mode because Spark's control system is capable of being used for tournaments. The Examiner further discussed a hypothetical tournament with separate, handicapped subdivisions based on levels of skill, wherein prizes are awarded in these subdivisions and asserted that a "biometric device would ensure that every player would have a chance to win based on the player's handicapped skill level." Applicants, however, disagree that the motivation asserted by the Examiner exists for several reasons.

First, the Examiner's alleged motivation to combine the references appears to be based at least in part on the fact that Sparks' gaming server could use a different statistical program, such as the "ngTCS™ tournament control system," instead of the Apache ver. 1.3.4 server (col. 3, lines 30-55). The Examiner therefore assumes that Sparks suggests conducting tournaments using the system. However, the only discussion of the control system in Sparks is that it is used to keep track of player statistics, and there is no teaching or suggestion in Sparks of actually conducting a tournament using the system.

Second, although the Examiner discusses in detail a hypothetical tournament mode, the Examiner does not provide evidence of such this type of tournament. Although the Examiner

provides an internet page entitled "ngTCS from NetGames USA," which the Examiner states discloses that the ngTCS control system is used for tournaments; the tournament discussed in the internet page does not mention separate, handicapped subdivisions based on levels of skill, which is at least part of the Examiner's alleged motivation to modify Sparks. If the Examiner is attempting to take official notice that these tournament features are well known, then Applicant's request that the Examiner provide a reference which show this to be the case. See MPEP § 2144.03.

Third, even if one were to assume that there is a motivation to conduct tournaments using the Sparks system (Applicant does not agree with this position), there is still no motivation or suggestion to modify the system so that the players in the tournament would be identified using image recognition devices. Although Schneier discusses the use of such a device with wagering games in which gamblers and casino's risk substantial sums of money, Schneier does not discuss the applicability of the biometric device outside of these types of wagering games.

There is a major distinction between the risks involved in video game tournaments and wagering games. Wagering games provide a substantial risk to the casino if a player with a fraudulent identity were to gamble using another player's identity. For example, a casino might not be able to collect money owed by the player with a fraudulent identity.

In contrast, if a player was to participate in a video game tournament using a fraudulent identity, then the worst case scenario for the tournament director is that a prize might be won by an undeserving player with a fraudulent identity.

Further, there is no evidence that at the time of the present invention that either 1) a user of the system in Sparks would be motivated to purchase a biometric device in order to participate in a video game tournament or 2) that the tournament directors would purchase multiple biometric devices in order to conduct such a tournament. It seems unlikely that this type of tournament, which generally welcomes participants, would discourage people from participating by requiring the use of additional image recognition software.

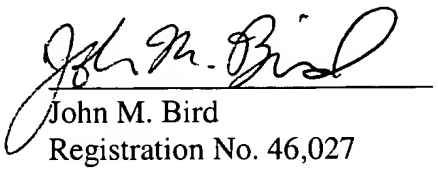
As such, Applicant respectfully requests that the Examiner withdraw the rejections of claims 1 and 7, and respectfully requests that the Examiner withdraw the rejection of claims 3-6, 8, 9, 11, and 12 at least because of their dependency from one of claims 1 and 7.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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